

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

WILLIAM C. CARPENTER, JR.  
JUDGE

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July 16, 2019

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RE: Murphy v. Pentwater Capital Management LP, et al.  
CA No. N16C-12-433 WCC CCLD

Dear Counsel:

The trial in this matter is set to begin on July 29, 2019 and some critical, last-minute discovery still needs to be completed. Whether that discovery will be necessary may depend upon the Court's decision regarding a key compensation provision in Plaintiff's Agreement with the Defendants. As such, in order to expedite the decision, the Court will issue this opinion in letter form.

The facts of this case are largely undisputed. Plaintiff worked as a portfolio manager for Pentwater, a Chicago based hedge fund, from June 2008 through February of 2011, when he resigned over a disagreement concerning the amount of compensation he was receiving and how Pentwater's CEO, Matthew Halbower, was determining it. In June of 2013, Halbower solicited Murphy to rejoin Pentwater, which he did on July 16, 2013. The circumstances surrounding Murphy's decision to rejoin Pentwater and the details regarding the complex compensation agreement are largely irrelevant to the determination of the issues now before the Court.

However, what is in dispute is the meaning of a post-termination provision in the Plaintiff's Agreement. That Agreement provides:

In the event that your employment is terminated, Pentwater will have no further obligation to provide any further compensation or benefits to you unless you execute a waiver and release of claims within two weeks of your termination in a form reasonably determined by Pentwater.

The critical portion of this provision is the now disputed language "in a form reasonably determined by Pentwater" and how that determines which party, if any, was required to institute or provide the release. Plaintiff suggests the language requires Defendants to initially create and provide the release to him. Defendants argue the language does not create such an obligation, and it simply required their reasonable consent and agreement to Plaintiff's release.

At the pretrial conference held on July 9<sup>th</sup>, both parties agreed that the language in the provision is not ambiguous and argued the decision as to its meaning should be made by the Court and not presented to the jury to decide at trial. As such, this is the Court's decision on the issue.

In spite of the various claims made in the litigation, the dispute here can be reduced to three questions: (1) Was Plaintiff fired or did he quit? (2) Were Defendants required to prepare and provide the release to the Plaintiff? (3) Depending on the answers to the first two questions, what additional compensation, if any, is owed to Plaintiff?

There is no dispute that, if Plaintiff resigned from his position, Defendants were not obligated to provide further compensation or benefits. Although the Court finds this is an issue of fact for the jury to consider, for the purposes of this decision, it will assume that Plaintiff was terminated by Defendants. This is not an unreasonable assumption based on some emails disclosed to the Court, but as long as it is disputed by Defendants, it will be a matter submitted to the jury.

If Plaintiff was terminated, it is also undisputed that he may be entitled to additional compensation. The condition to receiving the additional compensation was the waiver by Plaintiff of some unspecified rights or obligations and a release of unspecified claims. As such, if the Court was to accept Defendants' argument that it was the Plaintiff's obligation to create and provide the release, Plaintiff would be guessing what Defendants wanted to be released from and what claims they were asking him to waive. While such documents may be standard in the industry and thus Plaintiff and his counsel may have had a reasonable idea of what was being requested, the expectation of the Defendants in this tumultuous employment relationship was anything but clear. This uncertainty was further compounded by Defendants retaining the authority to decide the content of the waiver, as long as they exercised that discretion in a reasonable manner. These factors would lead to the conclusion that the obligation to initially provide the release was on Defendants. This could have been easily accomplished by attaching the document to the Agreement or simply providing Plaintiff with a proposed release upon his termination. Unfortunately, neither was done here.

Of course, Plaintiff is far from blameless in this situation. The benefit of additional compensation flowed to Plaintiff, and the Court has no doubt he, or at least his counsel, understood the significance of executing a release in a timely fashion. This is particularly true, as Plaintiff had previously terminated his employment based on Defendants' compensation calculations. It is certainly not unreasonable for Defendants to assume Plaintiff had made a conscious decision with his counsel to forego the additional compensation in lieu of his desire to pursue other legal remedies. This is particularly true when it appears to be undisputed that, without the waiver and release, Defendants owed Plaintiff no additional compensation, an obvious benefit to Pentwater. If Plaintiff failed to execute the release, Defendants were potentially saving millions of dollars by simply waiting to see if Plaintiff took such action. This clearly is not an unreasonable business decision.


The problem with Defendants' position is that they failed to call Plaintiff's bluff and force the issue. It is pretty clear to the Court that Plaintiff never intended to waive any rights and was looking to recover a bigger payday by pursuing litigation. It is also clear that the relationship between Murphy and Halbower was so toxic that litigation was inevitable, simply to satisfy the egos of two people where litigation was a game they could afford, whatever the outcome. From the Court's perspective, this litigation is a tragic example of our justice system being used by two greedy parties making unreasonable business decisions only because they significantly dislike each other.

Having considered the disputed language carefully, the Court agrees with the parties that it is not ambiguous and this dispute is one that should be resolved by the Court. As such, the Court finds that Defendants were required to articulate in a fair and reasonable manner in some form, either in writing or orally, what they expected to be encompassed within the release. They failed to do so. Until that information was disclosed to Plaintiff, either by Pentwater or its counsel, he had no basis to move forward and execute the waiver required.

As a result, Defendants' Motion for Summary Judgment based on the failure of Plaintiff to comply with the necessary condition precedent is hereby denied.<sup>1</sup>

The Court is not sure how this decision affects the need to depose Mr. Halbower, but if the deposition needs to go forward, it should be conducted at Pentwater's headquarters. In spite of the parties' agreement, the deposition may take up to seven hours to complete and must be done in one day. Pentwater must provide an appropriate venue to perform the deposition and provide all electronic equipment that Plaintiff's counsel indicates he needs to perform the deposition. If Pentwater cannot accommodate the electronic needs of Plaintiff's counsel, the deposition will be moved to Plaintiff's counsel's office in Chicago.

IT IS SO ORDERED.

  
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Judge William C. Carpenter, Jr.

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<sup>1</sup> The Court notes that Plaintiff has asserted in its brief that the two-week timing requirement in the Agreement was not material. The Court was not required to address that issue as a result of the decisions that have been made, but it does present an interesting twist to the litigation if Defendants were to now agree.